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CLERK OF SUPERIOR COURT
BY Sanborn
Clerk

Andrea McDiarmid
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In Propria Persona

PER LOCAL RULES 5 THIS
CASE IS ASSIGNED TO
DEPT. 2

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA**

No SUMMONS ISSUED

Andrea McDiarmid

Case No. **C 08-03135**

Plaintiff,

V.

COMPLAINT FOR:

Lawrence W. Thorpe,
Trevor C. Thorpe and
Gabrielle V. Thorpe as Individuals and
The Law Offices of Thorpe Law

Defendants.

- 1. PROFESSIONAL
NEGLIGENCE;**
- 2. FRAUD AND DECEIT;**
- 3. NEGLIGENT
MISREPRESENTATION;**
- 4. CONSTRUCTIVE FRAUD
(BREACH OF FIDUCIARY
DUTY);**
- 5. BREACH OF IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING.**

PARTIES

**1. Plaintiff Andrea J. McDiarmid is the respondent in a marital
dissolution action, In Re Marriage of McDiarmid, Case No. DO6-01070, filed
in the Superior Court of California, Contra County, in March of 2006.
Andrea McDiarmid has at all relevant times resided in Contra Costa County.**

1 2. Defendant Thorpe Law is a San Francisco law firm located at 115
2 Sansome St., Suite 1100, specializing in family law, custody, interstate and
3 international custody, divorce, divorce mediation, premarital agreement,
4 estate litigation, general civil and trial practice. Thorpe Law is comprised of
5 three family member attorneys, Lawrence W. Thorpe, Trevor C. Thorpe and
6 Gabrielle V. Thorpe and two legal assistants, Dr. Jan C. Thorpe, PhD and
7 Michelle M. Jeong.

8 3. Defendant Lawrence W. Thorpe is a certified family law specialist,
9 State Bar of California Board of Legal Specialization, admitted to the
10 California State Bar in 1967. Trevor C. Thorpe was admitted to the California
11 State Bar in 1998. Defendant Gabrielle Thorpe was admitted to the California
12 State Bar in 2006. Jan C, Thorpe is a licensed psychotherapist who Mr.
13 Thorpe engages part-time as a "legal assistant," albeit one whose services are
14 billed at the going rate of a psychotherapist.

15 FACTS COMMON TO ALL CAUSES OF ACTION

16 4. On June 27, 2006, Plaintiff Andrea J. McDiarmid retained Lawrence
17 W. Thorpe of Thorpe Law as family law counsel in her marital dissolution
18 case, In Re Marriage of McDiarmid, Case No. D06-01070, filed in Contra
19 Costa County.

20 5. Defendants Lawrence W. Thorpe, Trevor C. Thorpe and Gabrielle
21 V. Thorpe represented plaintiff Andrea McDiarmid for approximately 18
22 months, including a five day trial of the dissolution case on August 27- 31,
23 2007, in oral argument on reserved issues on September 12, 2007, in oral
24 argument on attorney's fees on December 17, 2007 and in the filing of post-
25 trial motions through December of 2007.

26 6. Additionally, defendant Gabrielle V. Thorpe continued to work on
27 plaintiff's case on a limited basis until January 16, 2008, engaging in
28 conference calls with newly retained counsel, Bruce Jobson of Staley-Jobson
in Pleasanton, California and with appellate counsel Robert Roth of Berkeley
California, as well as working on the completion of other matters pertaining
to transition of the case to new counsel. In accordance with defendant's
continued work on plaintiff's case until mid-January of 2008, Thorpe Law
billed plaintiff on February 1, 2008 for work performed by Gabrielle
Thorpe's time on plaintiff's case on the following dates: January 3, 2008,
January 9, 2008, January 11, 2008, January 14, 2008. January 15, 2008 and

1 January 16, 2008. Thorpe Law also billed plaintiff on February 1, 2008 for
2 "costs advanced" purportedly in November and December of 2007, but not
3 billed at that time.

4 **FIRST CAUSE OF ACTION**

5 (For Professional Negligence Against All Defendants)

6
7 By virtue of defendants' acts and omissions alleged herein that fell
8 below the standard of care for attorneys generally practicing under the same
9 or similar circumstances, defendants breached their professional duties of
10 care to plaintiff by negligently and carelessly failing to exercise the requisite
11 competence, diligence, skill, knowledge and judgment required of them in
12 undertaking and performing professional legal services for plaintiff in the
13 course of their representation. Such negligent acts and omissions include but
14 are not limited to the following:

15 1. On July 11, 2006, defendants Lawrence Thorpe and Gabrielle
16 Thorpe of Thorpe Law filed on behalf of plaintiff Andrea McDiarmid, a
17 request for a temporary restraining order protecting her from husband Bruce
18 McDiarmid, following a physical assault upon her on June 26, 2006 for which
19 Mr. McDiarmid was arrested by sheriffs called to the scene and jailed
20 overnight until his attorney posted bail the next morning. Deputy Roger
21 Breeding took pictures of strangulation marks on plaintiff Andrea
22 McDiarmid's neck, attaching them to his arrest report which was introduced
23 at trial. Four additional sets of photos were later taken by precipient witness,
24 mover Richard Fulghum, Judge Harlan Van Wye, photographer Deidre
25 Lingenfelder and Detective S. Piller of the Martinez unit who was dispatched
26 on July 2, 2006 to take updated photos of the additional bruising which had
27 eventuated in the few days following the attack.

28 2. The attack and strangulation of plaintiff Andrea McDiarmid was
followed the next day with medical care for abrasions and bruising on her neck
and upper arms performed by Dr. Judith Kellman, one of her internists at
John Muir Medical Group in Orinda, California. In the three weeks directly
subsequent, plaintiff Andrea McDiarmid was seen three additional times by
two other internists in the practice, Dr. Sandra Goldstein and Dr. Michele
Herman, who examined her for neurological symptoms which presented and
persisted, ultimately diagnosed upon referral for a sonogram on July 21, 2006
as a clot in the right carotid artery.

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3. Immediately upon receiving the sonogram report of an arterial hematoma causing a 25% occlusion of the artery, Dr. Michele Herman immediately declared a "medical emergency" and sent Mrs. McDiarmid to John Muir Emergency Room, making arrangements for her admittance upon arrival. Both the internal medicine group and the emergency room physicians recognized a life-threatening risk inherent in the proximity of the clot to the brain and the likelihood of stroke upon foreseeable migration.

4. Defendant Gabrielle Thorpe served an amended request for restraining order the next day on July 12, 2006, to correct errors she had made in her initial request. The temporary restraining order was granted and set for a short-cause hearing on July 28, 2006.

5. As anticipated by counsel for both parties to the restraining order hearing on July 28, the matter was continued for a long-cause hearing consisting of two non-sequential half days of trial on October 10 and October 26, 2006. Although all attorneys at Thorpe Law fully anticipated that the July 28 short-cause hearing would be a "non-event" involving nothing more than setting a date for a long-cause hearing, defendant Lawrence Thorpe insisted that it would have an important psychological or symbolic impact upon the judge to have all three attorneys at Thorpe Law attend the hearing, in order to represent the image of "family" by the encirclement of petitioner Andrea McDiarmid by father Larry Thorpe, son Trevor Thorpe and daughter-in-law Gabrielle Thorpe.

6. This strategy on the part of defendant Lawrence Thorpe and defendant Thorpe Law had the contrary, and entirely foreseeable effect upon the Court. It laid the foundation for an arguable assertion by opposing counsel that plaintiff willfully and frivolously drove-up attorney's fees by employing several attorneys where one would suffice, intent upon "frustrating the purpose of litigation." This assertion, intended to inflame the Court and invoke bias toward the credibility of plaintiff, was first set forth in opposition papers filed directly subsequent to this July 28, 2006 hearing and continued to be reasserted in oral and written motions throughout the 18 months of appearances before the same judge in the dissolution action. Rather than diffusing this argument by opposing counsel, Thorpe Law negligently persisted in the repeated practice of sending two attorneys, Larry Thorpe and Gabrielle Thorpe, to represent plaintiff at numerous hearings as well as the full five day trial of the case in August of 2007. Plaintiff was neither consulted

1 nor heeded when she questioned the potential inflammatory consequence of
2 this practice by Thorpe Law.

3 7. As the proximate and foreseeable result of this persistent practice of
4 sending two, if not three, attorneys to represent plaintiff, the credibility of
5 plaintiff with the court was profoundly undermined, enabling opposing
6 counsel to succeed in its attempt to characterize her as a vexatious litigant, a
7 belief adopted and explicitly stated by the Court in its subsequent Tentative
8 Statement of Decision On Reserved Issues of October 31, 2007, its Tentative
9 Statement of Decision on Attorney's Fees ultimately persuading the judge in
10 his decision on attorney's fees (requesting an equalization of disproportionate
11 fees falling upon the non-earner Andrea McDiarmid by the high-earner Bruce
12 McDiarmid) to deny almost any equalization, largely on the basis that
13 plaintiff's legal expenses were frivolous and unnecessarily inflated by the
14 "presence and representation of several attorneys at every event, as
15 continually asserted in every motion, every brief and at every juncture by
16 counsel for Bruce McDiarmid, Richard Rados.

17 • Defendants failed to exercise the skill, knowledge and judgment
18 required of them and failed to undertake diligent efforts to obtain expert
19 witness testimony to substantiate the fact and resultant injuries of physical
20 assault upon plaintiff by her husband, the opposing party in her dissolution
21 action and to prepare and present effective rebuttal of expert witness
22 testimony presented by the opposing party .

23 1. The first day set for the long-cause hearing to sustain plaintiff's
24 restraining order against her husband, Bruce, McDiarmid was October 10,
25 2006 , almost 10 weeks after the July 28 hearing establishing that date. A law
26 firm of the most minimally competent and diligent family law attorneys could
27 easily prepare for a single-matter long-cause hearing in 10 weeks time.
28 Indeed, counsel for Bruce McDiarmid, Richard Rados, became well prepared
for trial during this time. Thorpe Law received timely notice of Bruce
McDiarmid's intent to present two emergency room doctors from Stockton,
California , Dr. Robert D. Lawrence MD and R. Carter Clements MD, as
expert witnesses willing to testify to the notion that plaintiff's strangulation
and resultant arterial occlusion was self-inflicted. Counsel for Bruce
McDiarmid, Richard Rados, provided timely notice of his expert witness
designation to Thorpe Law.

1 2. Upon learning of this expert witness designation by the opposing
2 party, plaintiff Andrea McDiarmid expressed concern to Lawrence Thorpe
3 and Thorpe Law her based upon her reasonable assumption that it would be
4 necessary to present expert witnesses to counter this assertion. However, Mr.
5 Thorpe assured plaintiff that she needed no experts to counter such a
6 demonstrably "silly" assertion that someone could cause a clot in their own
7 carotid artery by strangling herself. Mr. Thorpe negligently failed to take into
8 account the fact that the doctors designated by the opposing party were
9 professional expert witnesses, whose livelihood was derived from their
10 familiarity with the process of direct and cross-examination and their
11 accompanying cultivated ability in artful evasions of questions aimed at
12 impeaching the consistency/credibility of their testimony.

13 3. Accordingly, Mr. Thorpe presented no counter expert witness
14 testimony. He negligently relied instead upon the expert "testimony" of a
15 journal article (in the form of an attached exhibit to his own declaration in
16 support of the restraining order) entitled "How To Improve Your
17 Investigation and Prosecution of Strangulation Cases" jointly authored by a
18 San Diego assistant city attorney and a San Diego emergency physician
19 stating, "manual self-strangulation is not possible, because when the
20 individual loses consciousness, pressure can no longer be applied." Plaintiff
21 relied to her detriment on Mr. Thorpe's reassurances that expert witness
22 testimony was unnecessary to rebut the testimony of the two emergency
23 physician professional expert witnesses who testified on behalf of Bruce
24 McDiarmid on two non-sequential days of the restraining order long cause
25 hearing, October 10, 2006 and October 26, 2006.

26 4. Despite the fact that the expert witnesses designated by the opposing
27 party were acknowledged professional witnesses who testified in civil actions
28 with great frequency, with the consummate agility of evasion in the face of
impeachment on cross examination which that profession implies, Mr. Thorpe
negligently failed to even take the depositions of these witnesses in advance of
trial for the reasonable, customary and diligent purpose of pinning down the
specific basis for general assertions broadly stated in declarations and to
thereby equip himself for effective cross-examination at the trial of plaintiff's
restraining order.

1
2 • Defendants carelessly and negligently failed to execute and serve
3 subpoenas on critical witnesses in the form, manner of service and within the
4 time limitations for service set forth in the California Code of Civil Procedure.

5 1. Although defendants attached as an exhibit to plaintiff's trial
6 declaration the medical records from John Muir Hospital emergency room in
7 Walnut Creek, California, including the diagnosis of occlusion of the right
8 carotid artery by attending emergency room physician, Dr. Antonio
9 Mutolsolani, they negligently failed to timely serve him with a subpoena to
10 appear at trial. Dr. Mutolsolani was the anticipated key witness at trial for the
11 vital purpose of interpreting the diagnostic findings of the emergency CT Scan
12 performed to confirm and approximate the severity of hematomal occlusion
13 of the right carotid artery and for the vital purpose of authenticating,
14 explaining and defending his diagnosis as one consistent with trauma to the
15 neck and inconsistent with any alternative explanation.

16 2. In her affidavit accompanying a subpoena duces tecum belatedly
17 served for Dr. Mutolsolani to appear as a witness at trial, Defendant Gabrielle
18 Thorpe cited the vital need for Dr. Muto-Isolani's testimony. In subsection 3,
19 page 2, of this declaration, defendant Gabrielle Thorpe sets forth as good
20 cause for the personal appearance at trial of Dr. Mutolsolani "Petitioner has
21 produced expert declarations from Robert D. Lawrence MD and R. Carter
22 Clements MD, based in part on review of the above medical records, that
23 dispute Dr. Mutosolani's findings and opinions as to injuries sustained by
24 Respondent on June 29, 2006."

25 3. Defendant Gabrielle Thorpe further sets forth on page 3, subsection
26 4 (Attached Exhibit E) an explanation of the materiality of both the
27 emergency room records and the personal appearance of attending emergency
28 room physician Dr. Mutosolani (sic) to interpret and defend his findings,
together with those of the consulting neurologist and thoracic surgeon, stating,
"The documents support Respondent's claim that she suffered from a clot in
her artery, not a carotid "lesion" as claimed by Dr. Clements relying on his
experience as an emergency room (sic), and not upon direct examination of
Respondent, and Dr. Lawrence's claim that the carotid intramural hematoma
diagnosis by Dr. Mutosolani (sic) was based primarily on Respondent's claim
of abuse. The medical records, however, are consistent with Respondent's

1 claim that her injuries were a result of Petitioner strangulation on June 29,
2 2006.”

3 4. Defendant Gabrielle Thorpe negligently failed to provide for witness
4 fees or even the requisite information concerning witness fees, a procedure
5 required in subsection 1 (e) on page 3 of the subpoena for Dr. Mutolsolani’s
6 appearance as a witness at trial. The answer required by the attorney
7 executing the subpoena in subsection 1(e) was left blank

8 5. Failure to produce the appearance and provide for the testimony of
9 key witness, Dr. Mutolsolani at the October 10, 2006 hearing was the
10 foreseeable and proximate result of the negligent failure by defendants
11 Lawrence Thorpe, Gabrielle Thorpe and Thorpe Law to timely execute and to
12 timely or properly serve Dr. Mutolsolani with a subpoena. This negligence on
13 the part of Thorpe Law resulted in valid objection from Dr. Mutolsolani’s
14 attorneys on the very morning of trial that the subpoena “was not personally
15 served on Dr. Muto-Isolani, did not contain payment of his witness fees at his
16 hourly rate of \$525, nor was it served within a reasonable time period to allow
17 him to make arrangements to appear at trial.”

18 6. All subpoenas for trial witnesses must be served no later than 10
19 calendar days before trial. However, the subpoena for Dr. Mutolsolani to
20 appear and testify at the October 10, 2006 hearing was served *five days too*
21 *late!* It was not served until 5:05 pm on October 5, 2006, as recorded on the
22 Proof of Service Of Civil Subpoena executed by Amanda Transue,
23 professional process server for Jeanne Kosta Professional Process Service The
24 subpoena was sent via fax to Jeanne Kosta Professional Process Service,
25 together with an attached personal note from defendant Gabrielle Thorpe to
26 Ms. Kosta, stating, “Thank-you for the fast service.” Unfortunately, the “fast
27 service” could not make-up for attorney Thorpe’s negligence in serving the
28 subpoena 5, not 10, days before trial. As the proximate and foreseeable result
of this negligence on the part of Thorpe Law, Dr. Matolsolani did not appear
as the anticipated key witness to testify at the October 10 hearing on the
restraining order as to the nature and apparent cause of injuries to plaintiff,
the matter at issue.

6. Defendants Gabrielle Thorpe and Thorpe Law further failed to have
the subpoena to Dr. Mutolsolani served upon him personally, as is statutorily
required to compel his appearance. This second defect of service was explicitly
pointed out by attorneys representing Dr. Mutolsolani in their letter on the

1 morning of trial, stating that he therefore could not be legally required to
2 personally attend and testify. Instead, the belated subpoena was served not
3 upon Dr. Mutolsolani at all, but instead upon the Custodian of Records at
4 John Muir Medical Center, together with a subpoena duces tecum
5 simultaneously and belatedly served upon said custodian for her personal
6 appearance at trial.

7 7. Defendants Lawrence Thorpe and Thorpe Law negligently failed to
8 oversee the work of first year associate Gabrielle Thorpe, who had passed the
9 bar only months before.

10 8. Due to its negligent failure to comply with the statutory time
11 limitations and manner of service for civil subpoenas, defendants Lawrence
12 Thorpe and Gabrielle Thorpe sacrificed the appearance of Dr. Mutolsolani to
13 authenticate the records of the CT scan performed, the diagnosis of an
14 occlusion of the right carotid artery in a manner entirely consistent with
15 trauma and inconsistent with any alternative explanation, given his reported
16 findings upon CT scan that both the left and right carotid arteries were
17 smooth, with an absence of plaque build-up, ruling out arterial disease. In so
18 doing, Thorpe Law additionally sacrificed Dr. Mutolsolani's corroboration of
19 the consulting thoracic surgeon called to determine if the clot necessitated
20 surgical removal or whether it could safely be dissolved with blood thinners.

21 9. The subpoena to the custodian of records, also executed and served
22 five days too late, failed to compel her appearance at trial, as was vital to
23 authenticate the emergency room records, results of the CT scan and
24 diagnosis by Dr. Mutolsolani, thoracic surgeon Dr. Gregory Rhodes
25 neurological consult Dr. Janet Lin. As defendant Thorpe sets forth as good
26 cause in subsection 3 of the subpoena, "Petitioner has produced declarations
27 from Drs. Lawrence and Clements, based in part on the above referenced
28 medical records, and dispute the attending physician's findings," going on to
state in subsection 4, "The medical documents support Respondent's claim
that she suffered from a blood clot in her carotid artery as a result of
Petitioner's strangulation attached on June 29, 2006. Although our offices has
obtained copied (sic) from the Medical Management Department of John
Muir Medical Center with an affidavit regarding the authenticity of the
medical documents, there has been no stipulation the affidavit will satisfy the
authenticity requirement under Evidence Code Section (sic) 1560, 1561 and
1562, and therefore the custodian of records must appear and authenticate
Respondent's medical records for the above state (sic) period."

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2 10. The above referenced subpoena, constructed in haste by defendant
3 Thorpe Law on October 5, 2006, upon defendant Gabrielle Thorpe's apparent
4 realization that she had negligently "blown-it" with respect to the statutory
5 deadline, was internally inconsistent and confusing by misdirection on the face
6 of the subpoena. Instead of checking the box on item 3 which states, "You are
7 ordered to appear in person and to produce the records described in the
8 declaration on page two of the attached declaration or affidavit. The personal
9 attendance of the custodian or other qualified witness and the production of
10 the records are required by this subpoena," defendant Thorpe negligently
11 checked the box with the contrary instructions: "You are *not required* to
appear in person if you produce (1) the records described in the declaration
on page two or the declaration or affidavit and (ii) a completed declaration of
custodian of records in compliance with Evidence Code sections 1560,1562
and 1271."

12 11. As the proximate result of Thorpe Law's negligent failure to timely
13 serve the custodian of records at John Muir Hospital emergency room, the
14 records were not authenticated at the trial of the restraining order which
15 plaintiff sought to uphold in the interest of her future safety.

16
17 • Defendants failed to timely, diligently and proactively obtain
18 discovery from opposing party to the dissolution action, Bruce McDiarmid, in
19 whose sole custody and control was 23 years of complex community financial
20 records.

21 1. Failure to obtain access to the underlying information in these
22 records was of heightened consequence in this particular case, as
23 acknowledged by defendant Lawrence Thorpe in his Declaration in Support
24 of Motion for Continuance filed in which he states, "These issues are of
25 particular significance in this case because all of the financial records of the
26 parties were maintained by Bruce exclusively without sharing them with
27 Andrea, except for her own personal checking account.

28 2. The imperative nature of a continuance to obtain these records was
underscored by Mr. Thorpe in his declaration, in which he decries and
catalogues in some extensive detail the highly deficient production of

1 documents within those subpoenaed from Bruce McDiarmid, pursuant to the
2 discovery demand issued two months prior, pleading to the Court the
3 "irrevocable damage" that would be caused to his client, Andrea McDiarmid,
4 if he were not granted addition time to pursue access to more than two
5 decades of community financials.

6 3. Mr. Thorpe further asserts in his declaration, the impossibility
7 of competent representation of his client without time to address the
8 thorough-going non-compliance from Mr. McDiarmid's law firm, Pillsbury,
9 Winthrop, Shaw, Pittman, who had produced no documents whatsoever
10 despite the passage of months and his own firms' prompt cooperation with the
11 requested protective order as to confidential financials of the firm itself. In
12 fact, it is noteworthy that Mr. Thorpe's declaration places urgent emphasis on
13 the fact that his "exposure for malpractice or abandonment in this case (was)
14 extreme" if he were not granted sufficient additional time to obtain these
15 documents vital to representation of his client's interests.

16 4. Mr. Thorpe goes on to enumerate on page 8-13 of his declaration
17 some of the extensive number and categorical range of documents omitted
18 from production, including but not limited to the following deficiencies: "No
19 accounting for Bruce's separate property reimbursement claims and
20 accompanying tracing has been supplied, the great bulk of the parties' credit
21 card invoices have not been produced," production of checking account
22 records is also substantially deficient, with missing bank statements and
23 cancelled checks, in addition to the absence of documents concerning
24 "partnership life insurance benefits," undisclosed liens" and "undisclosed
25 community property assets given the discrepancy between the substantial
26 income generated by Bruce over the last five to seven years and the complete
27 absence of any savings.

28 5. In this regard, Mr. Thorpe was quite correct when he stated on page
11 of his Declaration in Support of Continuance," Both I and Andrea's
forensic accountant can not meet the requirements of the trial scheduling
order, can not prepare for trial, can not assess the potential for omitted asset
and *cannot discharge our fiduciary duty to Andrea* without at least obtaining
production of these foundation cash flow documents generated during the last
five years before separation."

6. Once granted his continuance, however, Mr. Thorpe seemed to relax.

1 He seemed to have other plans for his time that did not involve this discovery
2 effort and, in fact, henceforward assumed no direct responsibility for
3 obtaining the extensive and critical financial information that had been the
4 basis for his motion for continuance. Neither Lawrence Thorpe nor defendants
5 Trevor Thorpe or Gabrielle Thorpe undertook diligent, consistent or timely
6 efforts to obtain a great proportion of the very documents which Bruce
7 McDiarmid had withheld from the beginning of discovery onward.

8 7. Instead, Mr. Thorpe abandoned both endeavors entirely, upon his
9 avowed belief that there was time for neither. Although defendant Thorpe
10 maintained to the Court in his reply to opposing party's Opposition To The
11 Motion For Continuance that he intended to issue a second RPD to Bruce
12 McDiarmid, he did no such thing. No additional request for the production of
13 documents was served upon either Bruce McDiarmid or upon Pillsbury,
14 Winthrop, Shaw, Pittman, the latter of whom had finally disgorged a random
15 and insignificant number of documents requested by the initial RPD.

16 8. At that critical juncture in discovery, Mr. Thorpe made the
17 unilateral decision to forego both a second document demand and to forgo a
18 motion to compel compliance. Although plaintiff was unaware of the
19 procedural remedy of a motion to compel, she was reluctant to give up on
20 obtaining from her husband this community financial information to which
21 she had a right. In response to her inquiry as to whether it was lawful for
22 Bruce McDiarmid to simply refuse to comply with the subpoena, Mr. Thorpe
23 represented, "Well, it's not technically allowed but, in practice, there's really
24 no way to make him." When plaintiff, in a state of disbelief, asked if there
25 wasn't some way to get the Court itself to intervene to prevent her husband
26 from obstructing discovery in this matter, Mr. Thorpe responded to the
27 implied naivete' of her question with a deft evasion, simply an ironic chuckle
28 and the comment, "Welcome to Dodge City!" He turned instead to the
subpoena of various third party institutions who might have in their
possession some, but by no means all, of the documents and underlying
information needed to fill-in the great holes in financial information
confronted in the initial phase of discovery.

9 9. Once having made this decision, Mr. Thorpe assumed no
10 direct responsibility for the issuance of these third party subpoenas,
11 delegating it entirely to his daughter-in-law, first year associate Gabrielle
12 Thorpe.

1 WHEREFORE, Plaintiff prays for judgment as hereafter set forth below.

2 1.For general, compensatory and special damages as may be proven at
3 trial.

4 2.For punitive damages as may be proven at trial and allowed by law.

5 3.For interest as may be allowed by law.

6 4.For attorneys fees as may be allowed by law.

7 5. For costs of suit as may be allowed.

8 6.For any further or additional relief as the Court may deem necessary or
9 appropriate.

10 Dated: December 16, 2008

11 Andrea McDiarmid, Plaintiff in propia

1. WHEREFORE, Plaintiff prays for judgment as hereafter set forth below.

2. 1. For general, compensatory and special damages as may be proven at
3. trial.

4. 2. For punitive damages as may be proven at trial and allowed by law.

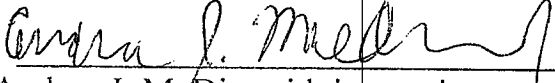
5. 3. For interest as may be allowed by law.

6. 4. For attorneys fees as may be allowed by law.

7. 5. For costs of suit as may be allowed.

8. 6. For any further or additional relief as the Court may deem necessary or
9. appropriate.

10. Dated: December 17, 2008

11. 
12. Andrea J. McDiarmid, in propia persona